

REMARKS

This amendment is in response to the Office Action mailed December 30, 3008. Claim 1 has been amended. Claims 1-21 are presently pending. No new matter has been added.

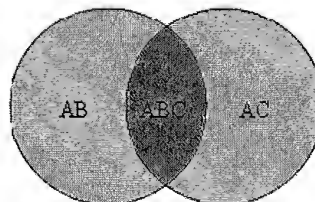
Restriction Requirement

The Examiner has required restriction between:

- I. Claims 1-13, drawn to a stylet having an outer covering set over an inner core, classified in class 604, subclass 164.01.
- II. Claims 14-21, drawn to a stylet having variable material properties and a blunt tip, classified in class 604, subclass 170.02.

The Examiner maintains that Groups I and II “are distinct because they do not overlap in scope and are not obvious variants.” The Applicants respectfully submit that these two Groups do overlap in scope. A stylet may have “an outer covering set over an inner core” (Group I) and still have “variable material properties and a blunt tip” (Group II). These two descriptions are not mutually exclusive and, therefore, contrary to the assertion in the Restriction Requirement, the two Groups do overlap in scope. The Examiner further asserts that “scope is overlapping if all limitation of one of the groups is included in the other group (e.g., groups with claim elements AB and ABC are overlapping, *but groups with claim elements AB and AC are not overlapping*) (Office Action p. 2, emphasis added).

Applicants respectfully submit that the Examiner’s statements are erroneous and that the two groups with claim elements AB and AC are not necessarily mutually exclusive and may be overlapping. As can be appreciated from observing the diagram below, the circle AB and the circle AC do overlap with the overlap corresponding to ABC:



Two elements, B and C, are “mutually exclusive”, based on the plain meaning of that term, only if an object containing B is precluded from also having C and an object containing C is

precluded from also having B. Only in the case where B and C are mutually exclusive do AB and AC not overlap because there can be no object ABC.

Turning to the present restriction requirement, the two groups of the present claims do overlap because a stylet can i) have an outer covering set over an inner core and ii) have variable material properties and a blunt tip. Having an outer covering set over an inner core does not preclude having variable material properties and a blunt tip. A stylet containing both i) and ii) falls within the scope of both Groups. Therefore, the two Groups overlap (see diagram above). Accordingly, the articulated basis for restriction between Groups I and II, that the two Groups do not overlap and have mutually exclusive characteristics, has not been established. Therefore, Applicants request reconsideration of the restriction requirement and rejoinder of claims 13-21.

§112 Rejection

Claims 1-13 was rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The Office Action objects to the elements “fixed” and the limitation that the outer covering extends from a proximal end of the stylet to a distal tip of the stylet. Although disagreeing with the Office Action, the Applicants have amended claim 1 to remove these elements. The Applicant requests withdrawal of this rejection.

Claim 1 has been amended to recite “an outer covering, made of a metal outer covering material and being constructed to be physically continuous throughout the layer.” This amendment is consistent with the Specification and finds support in at least paragraphs [0050] and [0051] as well as Figures 4 and 5.

§102 and §103 Rejections

Claims 1, 5-11 and 13 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,755,794 to Soukup (“Soukup”). Claims 2-4 and 12 were rejected under 35 U.S.C. §103(a) as being unpatentable over Soukup. The Applicant traverses these rejections.

Claim 1 recites an outer covering, made of a metal outer covering material and being constructed to be physically continuous throughout the layer. Soukup discloses an adjustable stylet,

which includes a core wire having a portion surrounded by a compression member preferably comprised of a flat wire spring. Soukup does not teach or suggest an outer covering that is physically continuous throughout the layer. Rather, the outer covering of Soukup consists of a compression member 14 with open windings located throughout its length. These open windings only close when force is applied to the handle 16" (Soukup, col. 3, lines 44-46). Thus, Soukup does not disclose an outer covering being constructed to be physically continuous throughout the layer, but one that has open windings throughout.

For at least these reason, claim 1, as well as claims 2-13, which depend therefrom, are patentable over the cited reference. Applicants respectfully request withdrawal of the rejections of these claims.

The dependant claims include additional patentable elements. For example, claim 6 recites a stylet, wherein the outer covering has a variable wall thickness along the length of the stylet. Applicants submit that Soukup does not teach or suggest an outer covering having a variable wall thickness. The Examiner argues that the "loosened state" of Figure 1 shows an outer covering having a variable wall thickness. As a courtesy to the Examiner, the figure has been reproduced below:

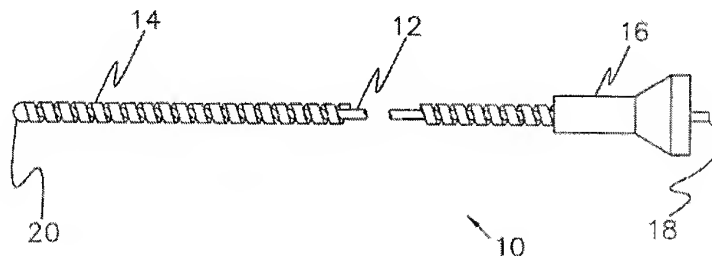


FIG. 1

As can be appreciated from Figure 1, there is no indication that compression member 14 has variable wall thickness. Though the figure shows that compression member 14 is coiled, it is of no value in determining the thickness of the wall. It is trivial to look at the loosened state of the stylet in Soukup because the wall thickness of the compression member is not a feature that will vary by loosening or tightening of the handle. Therefore, Applicants submit that for at least this reason, claim 6 is in condition for allowance.

Similarly, claim 8 recites a stylet having a variable outer circumference along the length of said stylet. Applicants submit that Soukup does not teach or suggest a stylet with a variable outer circumference. The Examiner again relies on Figure 1, though it is evident that the figure does not teach or suggest this limitation. In fact, if the compression member of Soukup were variable in circumference, moving the handle toward the distal end would not cause the open windings to close properly and would result in the compression member collapsing over itself. Therefore, Applicants submit that for at least this reason, claim 8 is in condition for allowance.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue. If the Examiner has any questions or concerns, the Applicant encourages the Examiner to contact the Applicant's representative, Bruce Black, by telephone to discuss the matter.

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Respectfully submitted,

By 

Bruce E. Black

Registration No.: 41,622

DARBY & DARBY P.C.

P.O. Box 770

Church Street Station

New York, New York 10008-0770

(206) 262-8908

(212) 527-7701 (Fax)

Attorneys/Agents For Applicant